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1 THE COURT: There is, on page 4 of his declaration, it
2 says: I never had seven passports -- skipping a little -- and
3 the government of the Kingdom of Saudi Arabia never required me
4 to turn in any passport or other travel document. Indeed, I
5 today have in my possession the Saudi Arabian passports that I
6 have ever had, all of which I have expired.

7 MR. HAEFELE: Thank you, your Honor. You have a very
8 good eye.

9 THE COURT: And that's dated December 2011.

10 MR. HAEFELE: And, your Honor, I would -- I guess that
11 obviates the next question which was did he get them back when
12 he was delisted but if he never had them taken, then there is
13 no reason for him to have gotten them back.

14 That's, I think the primary response that I had to
15 that. In terms of what the proper scope of jurisdictional
16 discovery is, I think I will leave it to your Honor to -- we
17 have laid out what our position is, your Honor.

18 THE COURT: How should one square the statement in the
19 2011 declaration of Mr. Al-Buthe with the representation you
20 made to the Court a little while ago?

21 MR. KABAT: I will have to check with him.

22 THE COURT: Well, as has been consistently true
23 throughout this case, drawing the line between merits discovery
24 and jurisdictional discovery can be difficult.

25 Before I rule let me also ask you, when I looked at

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1 paragraph 6 of your declaration which spoke about Mr. Seda you
2 also represent it seemed not to be tethered to what we are
3 talking about here with Mr. Al-Buthe, it looks like it was of a
4 problem of cutting and pasting. I just wanted to make sure
5 that is right and that I wasn't missing something.

6 MR. KABAT: Sorry. Again?

7 THE COURT: In your declaration that is document 53,
8 paragraph 6, the last paragraph deals with Mr. Seda and if
9 there is a point in there that relates to Mr. Al-Buthe I didn't
10 understand what it was. I wasn't sure whether the reference is
11 to -- well, it seemed to me the paragraph belonged with some
12 other document and really didn't relate to this. I just wanted
13 to make sure, your Honor.

14 MR. KABAT: Actually, your Honor, if you look at the
15 first page of that declaration I submitted the same declaration
16 in opposition to both motions to compel.

17 THE COURT: Oh. Okay. Then that explains it. Thank
18 you.

19 MR. HAEFELE: Your Honor, I guess I would make one
20 summary conclusion here.

21 THE COURT: Sure.

22 MR. HAEFELE: Defendant has an obligation to respond
23 to discovery and produce documents. Zero documents is not a
24 response. It is just an indication of actual nonparticipation.

25 THE COURT: Well, there is that and there was the

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1 request for more time to produce what eventually became no more
2 documents. As I indicated in relation to prior motions that we
3 have heard today, it seems to me that while there may not have
4 been an ideal interaction among counsel, there was an adequate
5 attempt to confer and that further conferring would not likely
6 have led to a different result since disagreement with some of
7 the requests isn't a license to ignore or not respond to all of
8 the requests. And it seems to me clear that some of the
9 documents that are sought are potentially relevant not just to
10 merits discovery but to jurisdictional discovery including, as
11 we discussed a little while ago, the documents relating to
12 listing and delisting.

13 We didn't specifically talk about it but I assume
14 Mr. Kabat's position is the same as it was earlier with respect
15 to the communications in the hands of Mr. Al-Buthe that he had
16 with the Saudi government.

17 I take it you are not claiming sovereign immunity as
18 to those; is that correct?

19 MR. KABAT: He is not asserting sovereign immunity but
20 it is not really relevant to the jurisdictional issues here. I
21 mean, he remains an employee of the government, he always has
22 been.

23 THE COURT: There is also, among the boiler plate
24 objections, the assertions that all of the records of either of
25 two Al-Haramain entities are the corporate property of those

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1 defendants and not Mr. Al-Buthe's property. I take a different
2 view; namely, if there were documents in his possession that
3 relate to those entities that are responsive, they have to be
4 produced. The objections that have been asserted are
5 essentially all boiler plate. The letter that I received
6 essentially talks about several things that I don't think are
7 relevant, one of which is, as I discussed with Mr. Haefele and
8 we all had some interchange about, the fact of delisting and
9 also the collapse of the Oregon criminal case which occurred
10 for a number of reasons, none of which relate to whether
11 Mr. Al-Buthe is or is not somebody who supports terrorism in a
12 fashion that impacted the United States.

13 Among other things, there is, as I think indicated in
14 a footnote, there was a different standard applicable to the
15 criminal case in terms of burden of proof, and obviously Grady
16 applies as a concept in the criminal case and apparently may
17 have been somewhat tortured and is not applicable in this
18 setting.

19 So, I am going to require production of the documents
20 that the plaintiffs seek as well as a certification that
21 Mr. Al-Buthe has produced all the responsive documents in his
22 possession, custody or control.

23 So, that's my ruling regarding Mr. Al-Buthe.

24 MR. KABAT: Your Honor, one question?

25 THE COURT: Yes, sure.

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1 MR. KABAT: Every document request pertains to
2 jurisdictional discovery. Are you carving anything out?

3 THE COURT: I am not carving anything out because my
4 view is the letter which didn't raise specific objections
5 essentially waived those objections and that the general
6 objections that are set forth in the formal document response
7 are not sufficient to assert an objection.

8 Let me just generally, while we are on that topic, the
9 rules applicable to this case, Federal Rules of Civil
10 Procedure, changed as you all know effective December 1st, and
11 the Advisory Committee's notes, I believe it is, suggest that
12 the they should be applied, to the extent possible or
13 practicable -- I am paraphrasing, not quoting -- in cases that
14 are ongoing.

15 So, as far as I'm concerned on a going-forward basis,
16 although I also held the view even before the rule's
17 amendments, general objections are not objections that the
18 Court will give any weight to.

19 Additionally, the change in the rule that I indicated
20 earlier says that if documents are being withheld based on an
21 objection, that must be disclosed in a Rule 34 response.

22 So, I intend to enforce both those provisions of the
23 revised rule.

24 The boiler plate objections that everybody has been
25 using since the beginning of time that objections are vague and

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1 ambiguous and unduly burdensome and the like, basically now, to
2 my mind, are surplusage, and when I see them I intend to turn
3 the page because they add nothing to the discussion and that's
4 been my view even before the rule's amendment.

5 So, that is part of the reason for the ruling that I
6 just made.

7 Let's move on to the next motion. What is that now?
8 We are up to MWL and IIRO.

9 MR. NASSAR: Good afternoon, your Honor. Waleed
10 Nassar on behalf of the IIRO and the Muslim World League.

11 Your Honor, we are here today before you seeking
12 plaintiff's compliance with your November 3rd, 2015 order. In
13 that order you obliged plaintiffs to disclose information in
14 their possession concerning the providence of a set of
15 suspected forgeries that were produced in late 2014 as well as
16 to provide us with original documents. To date, plaintiffs
17 have not provided us with any of that information.

18 I want to briefly focus your attention on four points,
19 your Honor. They are, number one, this issue has already been
20 decided and that ruling has been ignored by plaintiffs. Number
21 two, I want to briefly discuss the danger of the documents at
22 issue and why it is critical to address this matter now.
23 Number three, I would like to discuss why plaintiff's position
24 that we are not entitled to the information we seek at this
25 juncture is incorrect. And lastly, I would like to clarify

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1 what we are seeking from the plaintiffs at this juncture and by
2 contrast what we are not seeking.

3 THE COURT: They also say that this is a skirmish
4 about something that eventually may be completely irrelevant so
5 why bother dealing with it now. Maybe that's in one of your
6 other three?

7 MR. NASSAR: Yes, it will be covered in this point.
8 The relevance of the documents, if you reviewed them, they're
9 essential to plaintiff's claim.

10 First I would like to emphasize that the present
11 dispute has already been ruled upon by the Court. Since the
12 date of the Court's order some four months ago, we have reached
13 out to plaintiffs a variety of different ways. We have served
14 them with narrowly tailored interrogatories, conducted meet and
15 confers, and also exchanged numerous correspondences back and
16 forth. Despite the clear language of the order as well as our
17 repeated outreaches, we are no further along and have no
18 information on the providence of the documents. We do not know
19 the identity of the source of the document. We do not know
20 when they received them nor do we know the chain of custody or
21 any other circumstances relating to the receipt of the
22 documents.

23 Because of this impasse, we were forced to write to
24 you on January 21st and we are here before you today. I would
25 like to provide a brief overview of the nature of the documents

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1 and why it is critical to address this matter now.

2 In December of 2014, some 20 years after the first
3 documents in this set of documents was allegedly authored in
4 Peshawar, Pakistan, and some 11 years after the first lawsuit
5 in this litigation was filed a set of irregular inflammatory
6 documents were attached to pleadings against the Kingdom of
7 Saudi Arabia in this litigation. Plaintiffs provided no
8 explanation whatsoever as to where these documents came from or
9 why documents that originated from -- that were authored
10 between the dates of 1995 and 2005 would show up first in this
11 litigation in December of 2014. The documents purportedly
12 originate from closed and/or non-existent offices in Peshawar,
13 Pakistan of the Muslim World League as well as the
14 International Islamic Relief Organization. These suspected
15 forgeries contain a host of oddities that jump off the page.
16 Among the most egregious include a doctored logo of the Muslim
17 World League that features a map, your Honor, of North America
18 and South America as opposed to the Muslim majority countries
19 that are located in Asia, Africa, with Mecca in the middle that
20 is worn on authentic Muslim World League letterhead.

21 Additionally, there is a basic big grammar mistake
22 imprinted on the letterhead of every single one of the IIRO
23 documents in this set describing a fictional office that never
24 existed.

25 Number three, there are elementary grammar mistakes

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1 littered throughout the documents that even then the documents
2 were allegedly authored by native Arabic speakers.

3 Number four, all of the documents were authored by
4 individuals who either never worked for IIRO or Muslim World
5 League or ceased working for them. In fact, one of them was
6 incarcerated in Saudi Arabia on the same day that he allegedly
7 wrote a letter in Peshawar some thousands of miles away.

8 While each of the issues listed independently weighed
9 heavily against the authenticity of the documents, the
10 cumulative effect of the issues we have uncovered is
11 overwhelming. This is only what our preliminary investigation
12 has uncovered.

13 To perform a full and comprehensive analysis we need
14 more information as to the providence of the documents, who
15 they got them from, as well as chain of custody, and we also
16 need the original documents so that we may perform the forensic
17 analysis into the ink, paper, as well as the numerous
18 extraneous documents littering all of the documents.

19 I would like to turn to why plaintiffs position that
20 now is not the time for the information that we seek is
21 incorrect.

22 On the date of the order we had already produced
23 information concerning the office closures of the IIRO and
24 Muslim World League Peshawar office as well as the employment
25 records of any of the individuals who had worked for IIRO and

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1 Muslim World League. Additionally, subsequent to your order,
2 we provided them with a specific Bates range of those documents
3 in order to facilitate their own internal investigation.

4 We have also offered to provide them with a detailed
5 list of all of the irregularities that we have located in each
6 of the documents provided on the one condition that they do not
7 provide this list to the source that they will not disclose.

8 Under this proposal they would be free to share with
9 any other analyst or any other source, just not the source,
10 because we have credible fears that more credible forgeries
11 would show up later in this litigation that may actually
12 resemble IIRO or Muslim World League documents and would be
13 hard to detect that is clear as forgery. To date, plaintiffs
14 have refused this offer.

15 THE COURT: Weren't you tipping off their source,
16 presumably for fewer than more or better once.

17 MR. NASSAR: We have concerns that the source is
18 complicit in the generation of forgeries. That is a concern
19 for us.

20 Plaintiff's chief response to us has been that our
21 requests for information on the providence of the documents is
22 premature. They are incorrect. They're incorrect for three
23 reasons.

24 First, the Court has already ordered disclosure.
25 Second, there are grave questions with respect to these

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1 documents and they are central to plaintiff's case.

2 We need to know now, not five years from now, as this
3 will impact the direction their case will head against both the
4 Muslim World League and the International Islamic Relief
5 Organization.

6 Third, they have already submitted these documents as
7 evidence as part of their claims against the Kingdom of Saudi
8 Arabia both in 2015 as well as in their recent submissions in
9 the Second Circuit.

10 Your Honor, generally when authenticity is put into
11 question, additional information must be provided by the
12 proponent of the documents in order to allow the other party to
13 conduct a meaningful investigation. Plaintiff's claim a
14 blanket work product privilege but the name of the source, the
15 date they received the document, how they obtained them, those
16 are all underlying factual matters and they are not work
17 product.

18 Under *In Re: Initial Public Offerings Public*
19 *Securities Litigation*, the underlying factual matters of
20 attorney-client privilege are not matters in fact. This issue
21 arose in Strauss v. Credit Lyonnais where the Court ruled that
22 interrogatory requests for the identity of the persons who
23 supplied documents to plaintiffs does not fall under the
24 protection of the work product privilege because it does not
25 seek processes, opinions, or mental processes of plaintiff's

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1 counsel.

2 THE COURT: I guess part of their fear is that the
3 source may be two-fold, it may be an original source that they
4 have no direct contact with and then an intermediary who they
5 don't want to give up alleging work product or other
6 privileges.

7 MR. NASSAR: It is hard for us to discern that fear
8 because they provide us with no information on the providence,
9 so if they had given us something and were withholding
10 something then that would be a credible fear but they wholesale
11 have refused to provide us any information while simultaneously
12 claiming that they do not have the original which precludes our
13 ability to go after the originals from somebody who may have
14 had the documents at a previous stage.

15 THE COURT: One of the things my November 3rd decision
16 said, and this was one-sided rather than bilateral, if the
17 Muslim World League/IIRO nevertheless wishes to limit the
18 disclosure of some of those reasons, parenthetically referring
19 to badges of fraud, in the first instance to opposing counsel
20 in order to limit the risk of further alleged spoliation, that
21 is the subject about which the two sides need to confer.

22 I take it there has been no such conference?

23 MR. NASSAR: We have conducted a meet and confer, your
24 Honor. It went nowhere. We spoke for about an hour and a
25 half. When it was made clear to us that they wouldn't provide

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1 us the basic fundamental name of who they got the documents
2 from or any information whatsoever, we left them with our offer
3 which we altered our -- previously we asked them to provide us
4 with a list of errors we noticed in the documents for attorneys
5 eyes only. Subsequent to that order we amended our offer to
6 plaintiff's counsel and said you can share it with other
7 analysts, other experts but just not the source, and then they
8 refused that offer.

9 So, even if this Court were to consider this
10 information as protected work product, which it isn't,
11 disclosure may still be ordered because there is a substantial
12 need for the information and it is in the sole possession of
13 plaintiffs. In In Re: Savit litigation the Court determined
14 that both the substantial need and undue hardship components
15 mandated disclosure because the critical information was in the
16 sole party of the adversary.

17 Plaintiffs also think that we must rely upon them for
18 their own internal investigation into the suspected forgers.
19 This is incorrect. We not only have the right to perform our
20 own investigation, we have an obligation to our clients to do
21 so. Plaintiffs propose approached so far, the best we can
22 tell, has amounted to we have asked our undisclosed source who
23 may have been complicit in concocting these documents and he
24 says they are legitimate and this is insufficient.

25 Furthermore, of the few signs of any investigation on

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1 their part have revealed an inept process. They have reported
2 to us, for instance, that they had the contents of the
3 documents analyzed by their Arabic linguist and that they
4 stated that the mistakes within them are minor. In contrast,
5 we retained a senior Arabic linguist from Columbia University
6 who has looked through each of the documents and has detailed
7 over 90 elementary Arabic grammar errors in each of the
8 documents and he has concluded that the types of basic grammar
9 mistakes in the Peshawar letters would never have been made by
10 Arabic native speaker; with that, even an elementary school
11 student would be unlikely to make many of these mistakes.

12 Your Honor, I would like to conclude with clarifying
13 what we are seeking from plaintiffs at this juncture and by
14 contrast what we are not seeking. At this juncture we are
15 simply seeking information that the Court has already ordered
16 in the November 3rd, 2015 order, namely information concerning
17 the providence of the documents, who they served them from,
18 when they got them, chain of custody, whatever information they
19 have, as well as the original documents.

20 Practically speaking, much of this information is
21 routinely shared in the course of discovery as a matter of
22 course and in fact, as plaintiffs themselves will acknowledge,
23 we have specifically provided such information to them at their
24 request without mandating the Court's involvement.

25 Again, to be clear, we are not seeking to strike the

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1 documents at present, nor are we seeking a ruling that the
2 documents are definitive forgers. We are simply seeking
3 information that is solely in the possession of plaintiffs and
4 that will facilitate our own internal investigation.

5 The nature of the suspected forgeries has caused
6 significant alarm to our clients. IIRO and the Muslim World
7 League have been defending themselves in this litigation for
8 well over a decade now only to receive what appear to be a set
9 of very sloppy forgeries dropped into a belated 2014 production
10 without any explanation whatsoever. In fact, plaintiffs didn't
11 mark the documents as responsive to any of our document
12 requests. We stumbled upon them when we were looking at
13 submissions against Osama Bin Laden and we noticed three of the
14 documents pertain to our clients.

15 As plaintiffs have not objected to the November 3rd
16 ruling they have a present obligation to comply with the order
17 and to provide us with the information that we seek.

18 Thank you.

19 THE COURT: Mr. Haefelete?

20 MR. HAEFELE: Your Honor, once again, Robert Haefelete
21 from Motley Rice for the plaintiffs.

22 First off, one of the things I wanted to make sure we
23 are clear on and maybe I misunderstood the scope of what we
24 were here for today, I was under the impression it was a
25 pre-motion conference that we were addressing and not

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1 necessarily the merits of the argument.

2 THE COURT: Well, welcome to the Southern District of
3 New York where pre-motion conferences tend to merge into the
4 ultimate ruling and if I didn't follow that procedure we would
5 probably still be on the second of our conferences in this case
6 so I do intend to rule on the merits. If you were misled about
7 that --

8 MR. HAEFELE: Only a little bit, your Honor.

9 First off, let me just make clear, your Honor, that we
10 do disagree with IIRO's continual -- I will underscore
11 continual -- assertions that the documents at issue are bad
12 forgeries. The write up is repeated again and again and we
13 take issue with it. Nothing that IIRO has said, even today,
14 has convinced us that the documents are other than what they
15 purport to be on their face. And I think there was some
16 language in one of your Honor's order that hinted that maybe we
17 had waived on that position. It was merely, we have engaged
18 the defendants to try and figure out if we are wrong, if they
19 can tell us something that makes us move from that position and
20 we are -- as we have said from the beginning, if it turns out
21 that these documents are fraudulent documents, we don't want to
22 use them.

23 THE COURT: Are you talking about the portion of my
24 order which said the plaintiffs do not deny that some of the
25 documents may be forged?

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1 MR. HAEFELE: Yes, your Honor. And I think your Honor
2 was being as careful as we were saying that, you know, lots of
3 things are possible and is it possible? I suppose that's why
4 we are listening to them but our position is nothing has
5 changed our view that the documents are other than what they
6 purport to be. The documents do show that the organization's
7 had direct dealings with financial and weapons support to
8 al Qaeda. The defendants are right that there are some
9 interesting facts in the documents. In one document from 1999
10 at page 4 of 7 of ECF 3086-2, the author indicates we have been
11 advised that the Mujaheddin in your camps need some weapons,
12 bombs, and bullets so we have sent you some assistance
13 including the financial assistance in the amount of 40 million
14 Pakistani rupees. We ask that you receive it at the place
15 designated by you to purchase some of the weapons needed by the
16 Mujaheddin and to address their daily problems.

17 And in another document --

18 THE COURT: And to address the what problems? I
19 didn't hear.

20 MR. HAEFELE: Daily problems. I don't know that that
21 is necessarily pertinent but it was the end of the sentence.

22 THE COURT: Oh.

23 MR. HAEFELE: Another document from 2000 on page 3 of
24 7 in ECF 3086-2: The author indicates: As agreed with brother
25 Abul Hassan -- and the rest is illegible -- in Kandahar he has

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1 send ten one hundred thousands "one million" dollars for your
2 Jihadist needs and the various programs on which you have
3 agreed with Brother Abul Hassan. We will send you this sum but
4 sending it is difficult for us so please send one of the
5 brothers to receive this sum from Pakistan from us.

6 So, they're right, that they are certainly the
7 statements in the documents do go -- they certainly support
8 plaintiff's claims, no doubt, but are they documents that are
9 essential to plaintiff's case? I think that we have many other
10 documents related to Muslim World League and IIRO that support
11 plaintiffs claims significantly even if we didn't have these
12 documents but they certainly are strongly supportive of
13 plaintiff's allegations.

14 Let me rebut some of the things my colleague on the
15 other side said. We do think that the issue is premature.
16 These defendants are insisting that plaintiffs authenticate
17 documents before we know the documents will be used at trial,
18 before they have finished their own production as part of --
19 and as part of their production even before we know whether the
20 documents need to be produced, in other words documents from
21 their production will address issues as to whether these
22 documents are authentic.

23 The issue is wasteful, it is wasteful of time. The
24 parties and the Court have spent an enormous amount of time on
25 this issue especially when you consider the relative amount of

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1 the documents compared to all the other documents in the
2 litigation and the timing of the authentication issue early --
3 I mean, I know we are many years in this litigation but with
4 regard to documents that may be used at trial this is
5 relatively very, very early.

6 The issue is distractive, it is a distraction. It is
7 distraction attention away from other important progress
8 actually necessary to advancing the case. It distracts
9 attention away from the defendant's wrongdoing in discovery as
10 is evidenced by this Court's various earlier sanctions and
11 various other rulings on motions to compel. And our presence
12 here today to argue other motions to compel for sanctions.

13 It distracts the defense's attention away from
14 finishing the long overdue obligations to search for responsive
15 documents at Muslim World League's and IIRO's multiple offices
16 worldwide, a task that purportedly has been ongoing for a
17 decade and still has not reached conclusion.

18 The issue is dangerous precedent. In agreeing to
19 consider the defendant's motion to reconsidering authentication
20 of these documents now opens the door to similar inquiries
21 regarding other documents in the scores of documents that have
22 been produced at a stage in the case where we don't know
23 whether the documents will be produced and whether the
24 discovery will be necessary. And we don't know if the
25 documents will be part of the trial.

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1 And we don't know, because we haven't seen it, whether
2 the documents the defense will produce will answer the
3 questions but, nonetheless, their approach is before they
4 flow -- before they produce their documents to us to answer
5 those questions they want to delve into our work product.

6 Their list of the problems with the documents remains
7 incomplete. We don't know all the problems that they have and
8 they have told us that they'll be, under some
9 counsel's-eyes-only suggestion they have told us they'll allow
10 us a peek at what they say is wrong but the problem with that,
11 your Honor, is that what they want to do is handicap our
12 ability to investigate before they'll give us any information.

13 Presumably the person or the people who are the best
14 people to provide us with the information that will shed light
15 on whether these documents are fraudulent or not are the people
16 who they don't want us to have answer questions.

17 THE COURT: Say that again.

18 MR. HAEFELE: They don't want us to go back to the
19 people that gave us the document and have them go up the chain
20 and investigate whether or not there are benign reasons for
21 some of the things that they're pointing out and, quite
22 frankly, given what we have heard so far, there are presumably
23 very benign, possibly benign reasons for each of the things
24 they've told us so far and the question is, are they going to
25 give us 100 lists of other complaints serially over time that

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1 we can, you know, knock down every single one or can they give
2 us from now and we can investigate them and figure out whether
3 or not there really is something behind their complaints?

4 Presumably it would be much more efficient if we were going to
5 know what all the complaints are, we can investigate all the
6 complaints, tell them what the responses are, and if they still
7 have no problem, then we have advanced it to that extent
8 without going into plaintiffs' work product.

9 One of the crux -- they've listed so far, as I
10 understand, really three categories of complaints. I know they
11 have more they haven't told us but they have listed three
12 categories of the complaint. Number one, the documents are
13 from offices that weren't operating at the time. Number two, I
14 think they have indicated they use Gregorian versus Hijri
15 dates. There is problem with the letterhead, mathematical
16 errors, things along those lines.

17 One of the cruxes of their argument really relies on
18 the fact that there is no office in Peshawar at the time these
19 documents were purportedly authored. The documents have dates
20 of, as I indicated earlier, some of them are dates in 1999,
21 dates in 2000.

22 So, much of the argument has been premised on their
23 unsupported assertion, it is just their word, that the IIRO and
24 Muslim World League offices in Peshawar were closed as of their
25 argument is 1996 and 1997. So, they argue no office was open

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1 at the time the letters were purported to have been authored.

2 Well, whether the defendant's offices in Peshawar were
3 actually closed as they contend or whether or not that closing
4 happened in 1996 or 1997 is a question that's in dispute still
5 but the evidence suggests, your Honor, that the Peshawar office
6 was still opened at least into 2011.

7 What I would like to do, your Honor, if you would, I
8 would like to pass some documents up to you to take a look at.

9 THE COURT: Have you shared those with your adversary?

10 MR. HAEFELE: Well, they are documents that they
11 shared with us, they're their own documents.

12 THE COURT: Okay.

13 MR. HAEFELE: But I would be happy to give them a copy
14 as well.

15 THE COURT: Please.

16 MR. HAEFELE: May I approach?

17 THE COURT: Please.

18 MR. HAEFELE: Your Honor, one of the documents I have
19 passed up to you is IIRO 025784 through 25803. If your Honor
20 takes a look at that, these are account statements for an IIRO
21 account that was frozen after 9/11. The account statements
22 indicate that IIRO, if you look at the address on it, the dates
23 start in, I believe, 2001.

24 THE COURT: Correct.

25 MR. HAEFELE: And if you flip to the last one, they go

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1 through September 30th of 2011. And if you look at the address
2 to the IIRO office in all of them it is the IIRO office in
3 Peshawar and their account statements for Standard Charter
4 Bank. That's at least an indication --

5 THE COURT: I see the transaction history.

6 MR. HAEFELE: If you look at the top of the document
7 on the left-hand side there is an address.

8 THE COURT: I see. Yes.

9 MR. HAEFELE: Just to be clear, the Bates stamp
10 indicates that they are produced to us by IIRO. And if that's
11 not indicative enough, if we look at the other document I
12 provided you which is IIRO 149483, it is a declaration of a
13 Shoib Sultan, who identifies himself in the affidavit here or
14 declaration as the accountant for IIRO Peshawar and the
15 declaration is dated April 9, 2001, again that is indicating
16 that the Peshawar office of IIRO was open sometime after the
17 date that the defendants have indicated to us.

18 These indicate, your Honor, that at the very least,
19 there is a question of fact as to whether or not the office
20 they claim was closed in 1996 or 1997 was indeed closed or
21 whether or not some office was closed but there was some office
22 that was still an IIRO office in Peshawar.

23 The use of Gregorian dates versus Hijri dates? We are
24 talking about documents created in Pakistan that has a history
25 that in addition to having a history of using Arabic dates by

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1 some people, there is also a significant history of using
2 English or Gregorian calendar dates as well and whether an
3 author used one versus another, that is not a reason to
4 indicate the document isn't authentic, it is just a preference
5 of the particular author.

6 And the letterheads with the grammar and erroneous
7 information and the allegations of it being outdated letterhead
8 as well as the errors within the documents -- look -- if your
9 Honor looks, I hate to say it but if you look at one of my
10 briefs there is probably a typo in it somewhere, there is
11 probably problems or grammatical errors.

12 THE COURT: I am glad you picked on yourself rather
13 than me.

14 MR. HAEFELE: I am not really that dumb, your Honor.
15 There is also the possibility that the documents, the
16 letterhead may have been created by a local printing company in
17 Peshawar that may have been a non-Arabic native speaker.
18 Arabic is not the native language of Pakistan and the fact that
19 a non-native printer may have printed up the letterhead and
20 said something different than what a printer in Saudi Arabia
21 may have printed should be no surprise and it doesn't indicate
22 that the documents have to be non-authentic.

23 Part of the problem here, your Honor, is the
24 defendants, because they haven't completed their own
25 production, have not produced even a fraction of the documents

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1 that they should have but that that includes documents that
2 indicate misconduct attributed to the IIRO Pakistan office
3 related to fabrication of documents.

4 Discovery that relates to the fabrication of documents
5 at an office from which the documents that were here to talk
6 about originated is particularly telling.

7 Let me just digress for one moment.

8 During a hearing in November of 2011 your Honor
9 admonished these defendants, the same two defendants, that it
10 expected that among the documents they were to produce to the
11 plaintiffs are documents unlike audits done at the various
12 field offices which would have included documents underlying
13 the audits in the Pakistan office. Still, years after the
14 Court's admonition to produce the documents, we don't have
15 documents produced from those offices related to those audits.

16 On page 6 or 16 of the November -- I think it is
17 November 2011 transcript, your Honor, you made clear that the
18 discussion applied to all the branch offices of the two
19 entities, Muslim World League and International Islamic Relief
20 Organization. "Except to the extent that two sides can agree
21 that some branch office is not relevant, if each branch office
22 is not queried and documents from that branch produced, as far
23 as I'm concerned that will have been an inadequate search and
24 may lead to dispositive sanctions."

25 Then, on page 17 and to 19 your Honor said: Talk for

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1 a moment about the audits. It seems to me the defendants will
2 not have done their job as to audits unless they have searched
3 their own records to make sure that if they have retained
4 copies of audit reports and the documents that underline the
5 audit records.

6 Mr. McMahon, who represented the defendants at the
7 time, confirmed his understanding by repeating back to the
8 Court: I hear, your Honor. You want any and all records
9 produced that are still in the possession or control of the
10 charities that in any way supported the audit.

11 Then your Honor further clarified by stating: Or that
12 are the audit, yes. And then your Honor went on to explain
13 that you expected that all the branch offices to be searched
14 saying whether that is found in Saudi Arabia or in the
15 Philippines office doesn't matter. Somebody, in an organized
16 way, has to query all of these offices and be in a position to
17 say that was done to follow up and you really need to document
18 the process.

19 Your Honor was very clear that all of the offices had
20 to be searched for the underlying audit reports -- or the
21 underlying documents to the audit reports as well as the audits
22 and you also have made clear, though not in this text, you have
23 also made clear that that extends to the practical ability to
24 obtain the document from agents, for example, the auditors who
25 performed, it was an external audit, to search and go to them

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1 and ask them for documents as well.

2 And it appears that the admonition was at least
3 partially acted on by IIRO based on a letter from IIRO's
4 secretary general Dr. Adnan Basha to the directors of the
5 various IIRO offices and the letter was dated about two weeks
6 after that court hearing, December 2, 2011, and the court
7 hearing was November 16, 2011 and it asked and it went to a
8 number of offices including the Pakistani offices and the
9 document was titled Providing the IIRO Secretary General with a
10 Copy of the Working Papers Used by the External Auditor for
11 Issuing the Financial Statements of IIRO Office of Pakistan for
12 the period 1992 to 2004. That's IIRO 16657.

13 So, it is very clear, again, not only that your Honor
14 ordered them to produce all the audits, all the underlying
15 documents and that that was at least followed through, to
16 asking for those documents to be collected.

17 Now, again, discovery of the fraudulently created
18 documents from the defendant's Pakistan office is particularly
19 pertinent to the issue that we are here for today, whether or
20 not there was some involvement of documents that were
21 fraudulently created or created outside the normal scope of how
22 documents would ordinarily be created because it also goes to
23 whether they had printers on standby, whether they were
24 generally going outside, producing documents internally that
25 were not the normal documents that would get used.

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As indicated in plaintiff's January 28, 2016 letter which is ECF 3207 and Exhibit A attached to that, the defendants produced a 2001 audit indicating gross financial irregularities and the diversion of millions of dollars from one of their Pakistani branch offices involving office personnel conducting massive fabrications of invoices, receipts, and other office documents in relation to construction projects, medical services and other activities.

And there is another document that we have recently come across, it is IIRO 0149346, it is an April 14, 2001 letter Nazir Khan, the manager of the IIRO office, I would pass it up to your Honor but it is in Arabic so I don't think it will help you.

My understanding of what it is, it is another document produced by these defendants that indicates that in April 2001, IIRO's Pakistan office was conducting an audit for some kind of an investigation of alleged fabrication of financial documents and signatures related to an IIRO-supported hospital in Peshawar.

The point, your Honor, is that there is indications within their own documents of massive fabrication of documents going on in Peshawar and in Pakistan offices of IIRO and production of those sorts of documents, production of information regarding the audits and the documents underlying those audits may inform information about the offices that we

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1 are here to talk about as well as the conduct of what was going
2 on and it really comes back to the very beginning that this is
3 premature. The defendants really need to produce documents to
4 us to tell us what the underlying facts are about what's going
5 on before they come to us and say that we are obligated to
6 produce our work product.

7 I won't belabor this, your Honor. In our brief we
8 cited to some case law that contradicts what the defendants
9 have said about our obligation to tell them about who our
10 investigators are and you had it right, your Honor, that we
11 have our source, our consulting investigator that we take the
12 position, identification of who our working expert or who our
13 investigator is, is privileged. Where our source got it from,
14 that's someone that we don't know, your Honor. Even if your
15 Honor ordered me to tell them who the original source is I
16 can't comply because I don't know who it is. That's something
17 that came from the investigator.

18 THE COURT: You are saying the investigator doesn't
19 know either?

20 MR. HAEFELE: I do believe that the investigator does
21 know but I will also add that the investigator has told us that
22 while he hasn't told us who it is, he has told us what the
23 position is and this is one of the reasons why he hasn't told
24 us, I think, revealing the original person or people who
25 provided the documents would put that person or those people in

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1 risk of grave harm in Pakistan and that's one of the reasons
2 why they have been very clear to us that they are very afraid
3 of us revealing who they are.

4 There is a mantra, your Honor, that you have already
5 ordered what they've asked for. My understanding, your Honor,
6 reading through what your Honor ordered was you ordered us to
7 conduct discovery and we did that. Your Honor ordered us to
8 respond to discovery, which we did. But you surely, I hope,
9 your Honor, did not intend to overrule specific objections that
10 we asserted in discovery before the discovery was even
11 responded to. So, the fact that they keep saying you have
12 already ordered this, I think, misunderstands the fact that
13 there was a process that your Honor ordered and I think our
14 position is not only have we engaged in that process but as
15 part of that process we have also served discovery on the
16 defendants and they have not produced a single document in
17 response. They have identified certain things within their
18 document -- within their responses but they have -- my
19 recollection is they haven't responded, in full, to the
20 discovery.

21 Three other really short points.

22 Number one, I think there is a reference that we
23 hadn't produced the documents before and I think they've
24 indicated the first they came to know of the documents was in
25 the plaintiff's response to the Kingdom of Saudi Arabia's

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1 papers on appeal. The fact is, though, that they were produced
2 in discovery during the document production period which
3 preceded that. They just may not have seen the documents.

4 There is also a suggestion, your Honor, of a forensic
5 analysis on the documents that we have in our possession. I am
6 afraid to say that since we just have the documents in pdf, all
7 we are going to do is find a printing from Motley Rice which is
8 no help at all.

9 It is also, your Honor, my last point and it is very
10 silly to suggest that we or any of the plaintiff's counsel
11 would accept more documents from a source that it had shown to
12 have fabricated documents. So, the implication that they can't
13 give us the information without going back to the people who
14 have the most information to answer the question because for
15 fear that we would then take more documents from them if it was
16 deemed or determined that they were fraudulent, is foolish. We
17 just wouldn't do it. It wouldn't make sense.

18 I think that's all, your Honor. Thank you.

19 THE COURT: Thank you.

20 As to this issue, the --

21 MR. NASSAR: Your Honor, can I respond to a few
22 points?

23 THE COURT: Briefly, hopefully.

24 MR. NASSAR: Your Honor, again, we are not seeking to
25 strike the documents. So much of what plaintiffs argue is,

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1 frankly, irrelevant. There is a long discussion about our
2 discovery applications. Plaintiffs have already indicated that
3 they're intending on raising a motion to compel next month and
4 I will save a lot of our response to those issues for a later
5 date. We don't have to convince plaintiffs that they are
6 forgeries at this point, we have to raise certain issues that
7 weigh against the authenticity of the documents.

8 Plaintiffs seem to think that we must make a full
9 showing at this juncture but that is not what we are mandated
10 to do.

11 Additionally, they brought up our discovery -- they
12 brought up the Pakistan audit and the irregularities at the
13 Pakistan office. We have recently provided the plaintiffs well
14 over 90,000 pages of documents concerning the Pakistan office
15 and the irregularities that occurred there. That audit had to
16 do with the Islamabad office and had nothing to do with the
17 Peshawar office so, frankly, plaintiff's citation to that audit
18 is not relevant to the matter at hand.

19 THE COURT: How about the documents that Mr. Haefele
20 handed up today which seem to suggest that there was a Peshawar
21 office?

22 MR. NASSAR: Well, the documents -- any IIRO document
23 that has the letterhead refers to brick and mortar. I wrote
24 the operation IIRO head on business conducted there and they
25 are long standing and they still conduct certain projects in

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1 Peshawar, that has not ceased. So, we have seen other
2 indications where folks have signed as the representative of
3 IIRO in the location, would sign IIRO with the location listed.
4 It is not indicative of a brick and mortar operation there.

5 I haven't looked closely at the documents he cited but
6 that's the initial response.

7 Additionally, we are prevented from conducting our own
8 investigation into the documents so it is well taken that
9 they're not going to try to get more documents from somebody
10 who has been shown to have produced forgeries. But, if we are
11 precluded from conducting our own investigation and showing
12 that there are forgeries, it is a circular situation where we
13 are not able to show that.

14 Additionally, your Honor, this inquiry is not
15 premature. The plaintiffs are already relying on the
16 documents. You have already ordered that certain information
17 should be disclosed on both sides. Plaintiffs state that we
18 have not produced documents subsequent to your order but that's
19 because they had already been produced previous to your order.
20 We ended up specifying the Bates ranges but the fact that there
21 were no additional documents in there that we had already
22 provided that information to plaintiffs is no indication that
23 we have not complied with the order.

24 Additionally, your Honor, I have been to every
25 location personally and have supervised an Arabic team of

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1 attorneys where these documents may have been located. They
2 are not in our files. I have been to Islamabad, have been to
3 Riyadh which oversaw operations, and Mecca. In addition to
4 that, to hear plaintiffs speak about discovery noncompliance,
5 we have also led a team to the Philippines, to Indonesia,
6 Bosnia, Kosovo, Macedonia, as well as Albania. Our efforts
7 will be well documented but they have been Herculean and we
8 have produced well over 300,000 payments in the last three
9 years so I'm not sure what the nexus is to this dispute at
10 hand.

11 We need to know who the source is at bottom. It is
12 well taken that plaintiffs counsel does not know a lot of the
13 information concerning where the documents came from or how
14 they ended up in somebody's files, but by them not disclosing
15 the name of the source of the documents they're tying our hands
16 and we are unable to find that information ourselves.

17 We have also offered the plaintiffs that we would
18 review the name of the source attorney's eyes only and we would
19 not disclose that to our clients. We have previously offered
20 this to plaintiffs in a meet and confer and they have not
21 accepted that offer. So, that would mitigate a lot of the
22 fears of safety concerns I think.

23 That's all.

24 MR. HAEFELE: Your Honor, very quickly.

25 THE COURT: Yes.

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1 MR. HAEFELE: We are not stopping them from
2 investigating. They can investigate if they want and I would
3 welcome the investigation but that still doesn't mean that they
4 have the obligation or the right or authority to invade
5 plaintiff's work product information which is the crux of what
6 they're asking for us revealing our information about our
7 consulting -- it doesn't obligate us to produce information
8 about our consultants.

9 In terms of who is tying whose hands they're tying our
10 hands by not producing the information we have asked for.

11 Quite frankly, your Honor, one of the things I do want
12 to emphasize if your Honor is going to address this, it has to
13 be in the context of considering our objections to their
14 requests as well as our concerns over their noncompliance with
15 the production of documents relative to this issue. It was a
16 two-way street in terms of discovery regarding these documents
17 and we produced information and they have not.

18 Lastly, your Honor, I think that on his request for
19 attorney's eyes only access to who the source is, just the
20 source, I believe, is a little uncomfortable with us telling
21 the lawyers for the defendants who he is as well.

22 THE COURT: Say that again.

23 MR. HAEFELE: What I am saying is that it is my
24 understanding that the source -- it is not a very easy thing to
25 say, oh, Mr. So-and-so in Pakistan, we are going to tell the

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1 lawyers for the people who may hurt you or people related to
2 the people who may hurt you who you are. But, don't worry,
3 that won't get around.

4 I just don't think it is going to be well taken.

5 MR. NASSAR: Your Honor, many of --

6 THE COURT: I have heard enough.

7 I am not unsympathetic to the notion that this whole
8 exercise may be somewhat wasteful but it seems to me most of
9 the waste on a going forward basis to the extent it occurs will
10 be on the defendant's side because they'll have the laboring
11 oar in terms of proving that this document or these documents
12 are forgeries, if indeed they are.

13 I don't disagree that it's a bad precedent, perhaps,
14 in the sense that we could start going document by document and
15 having squabbles about the authenticity of documents that may
16 never factor into dispositive motion practice or a trial but we
17 did start down that road with respect to this document and my
18 rulings with respect to it are not an indication of what I
19 think should happen with respect to any future such documents
20 that may arise on either side.

21 To the extent that there were points raised about the
22 MWL and IIRO production, that will presumably be the subject of
23 yet another motion to compel. So, it seems to me that that,
24 with one exception I will get into, is unrelated.

25 My November 3rd order did not set a date for

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1 compliance and may have used some language that was more
2 generic or unspecific than it should have been. For example,
3 my statement that, similarly, the plaintiffs will be obliged to
4 disclose information in their possession concerning the
5 providence of the documents and, as counsel pointed out, no
6 objections to this order back in November, were filed.

7 I am not insensitive to the concerns about the safety
8 of sources or the dismay that an intermediary source who is
9 functioning in some sort of investigative function may have but
10 I do think reasonable accommodations can be made.

11 I am going to require that on a date certain -- and
12 the two sides can confer on what that date should be and if
13 they are unable to agree I will set a date -- the defendants
14 MWL and IIRO must disclose the specific badges of fraud that
15 they say establish the falsity or the fraudulent nature of the
16 document and that if there are documents that support that
17 claim, even if they're just specimen documents, that those
18 documents be produced as well. The defendants can set the
19 restriction that they proposed which is that everybody other
20 than the source can be given that list of reasons why the
21 defendants believe the document is forged.

22 As to the source, there really are two sources, the
23 investigator and the ultimate source of the document which
24 Mr. Haefele may not know but certainly is something that
25 potentially the plaintiffs can find out.

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1 As to the investigative source of the document, if I
2 can call it that, I am going to direct that that be produced
3 for attorney's eyes only.

4 As to the ultimate source, I am going to make the same
5 direction but I will permit the plaintiffs to make a
6 particularized showing to me, why don't I say within two weeks,
7 as to what danger that would present -- and I do mean
8 particularized. And I would expect that all or virtually all
9 of that submission would be shared with counsel for the
10 defendants so that hopefully there won't be a document with
11 redaction that defense counsel receives.

12 If it turns out that the accusation regarding the
13 providence of the document being fraudulent -- let me rephrase
14 that because it is coming out wrong.

15 If it turns out that the accusation that the document
16 is false or forged eventually proves to be incorrect, I may
17 well or the Court may well award the costs associated with all
18 of this to the plaintiffs against the defendants.

19 Originally I was going to reserve decision as to
20 whether the defendants could have their own expert test this
21 document but since it appears not to be an original there is
22 nothing that can be done by way of testing at this point. I
23 want the two sides to discuss where the original is and whether
24 it can be brought to the United States or perhaps is in the
25 United States in the hands of the investigator. If so, I would

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1 permit the defendants to inspect the original but would not
2 require that it be surrendered for purposes of expert testing
3 without a further order of the Court.

4 So, those are my rulings with respect to this issue.
5 Any questions?

6 MR. HAEFELE: Your Honor, I do have some questions.

7 I think your Honor touched on it, but with regard to
8 our particularized showing, based on what your Honor said I'm
9 assuming that though it is not favored, some of the submission
10 may be in camera?

11 THE COURT: That's exactly right. Yes.

12 MR. HAEFELE: Okay.

13 THE COURT: I'm not in favor of that or would hope
14 that that wouldn't come to pass but I am not ruling it out.

15 MR. HAEFELE: And, your Honor, to the extent that the
16 defendants, with regard to their, the document discovery
17 responses that they've proposed to us related to these
18 documents, to the extent that they purely object based on
19 filing grounds, a lot of it was that they thought that we
20 should go first and not them.

21 THE COURT: When you say discovery responses?

22 MR. HAEFELE: Based on your Honor's ruling the
23 defendants served discovery on us and we served document
24 requests and interrogatories on them. Some of the responses
25 the defendants responded to us was that much of it was you go

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1 first and in light of your Honor's ruling that it is not
2 necessarily that plaintiffs go first, to the extent that that's
3 what their objection was, may we have that discovery?

4 THE COURT: Well, my ruling is I hadn't focused on
5 discovery that the two sides may have served on each other but,
6 in essence, my ruling is you all go together when you go so on
7 certain dates both sides are to respond and I do mean respond,
8 not file a series of objections.

9 Anything else?

10 MR. NASSAR: Your Honor, two things.

11 THE COURT: Let me finish with Mr. Haefele.

12 MR. HAEFELE: To the extent there are discovery
13 requests on both sides, the date that we select would be both
14 sides would be responding?

15 THE COURT: Yes.

16 MR. HAEFELE: Okay.

17 THE COURT: Yes, sir.

18 MR. NASSAR: Your Honor, we have two outstanding
19 questions aside from the name of the source of the documents,
20 namely the date on which they received the documents as well as
21 other circumstances surrounding how they obtained the
22 documents. We didn't -- if you could rule on those as well?

23 THE COURT: I think that's what Mr. Haefele in part
24 was asking me about. I think I did just rule.

25 MR. HAEFELE: I was asking about their responses to

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1 us.

2 THE COURT: Okay, but it is comprised within that
3 ruling, it seems to me.

4 MR. NASSAR: Thank you, your Honor.

5 THE COURT: And I guess that brings us to Wael
6 Jelaidain.

7 Let's take five minutes.

8 (Recess)

9 THE COURT: On to Wael Jelaidain.

10 MR. CARTER: Your Honor, thank you. I will be as
11 brief as possible. I understand we have all been here for a
12 long time and we have already covered quite a bit of territory
13 along the way with Mr. Jelaidain.14 The motions before your Honor include both request for
15 sanctions and to compel further production of documents from
16 defendant Jelaidain. They include banking and other documents
17 Jelaidain secured for the benefit of co-defendant Yassin
18 al-Kadi, documents relating to the Swiss government's
19 investigation of Jelaidain including materials relating to the
20 interview that was conducted of him in Riyadh, documents
21 relating to the Maryam Company at Faisal Finance, a joint bank
22 account he held with fellow executive order 11234 designate
23 Sharif Ayadi, documents relating to his ties to government
24 offices of the Kingdom of Saudi Arabia and its charities, and
25 finally documents relating to his corporate agent and Abrar

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1 Caravan, Euro Investment, KA Stan and Maryam Travel.

2 As your Honor knows, this Court issued sanctions
3 against Defendant Jelaidain in October of 2013. After a
4 somewhat tortured procedural history the Court imposed those
5 sanctions based on the record that existed at that time that
6 demonstrated that Defendant Jelaidain had not taken to heart
7 this Court's directive that he engage in a full court's press
8 and make diligent efforts to secure such documents within his
9 custody and control.

10 The further discovery we have received at this point
11 paints a more problematic picture of the state of affairs, your
12 Honor. In particular, documents produced by defendant al Kadi
13 reveal a 2003 meeting between Mr. Kadi's attorneys and
14 Mr. Jelaidain's attorney which Mr. Jelaidain promised to
15 provide assistance to Mr. Kadi in relation to the
16 investigations of him and, in particular, to authorize access
17 to corporate documents for Maryam as well as banking documents
18 for Jelaidain's personal accounts and for Maryam accounts at
19 Faisal Finance.

20 Thereafter, on July 18, 2003, Defendant Jelaidain
21 received a letter from Faisal Finance indicating it had started
22 retrieving the records. So, what we now know, your Honor, is
23 at the time Defendant Jelaidain was indicating to this Court
24 that it was impossible for him to secure his records and his
25 banking records, he had in fact successfully done so for the

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1 benefit of defendant al Kadi.

2 And so, that paints a much different picture of the
3 state of affairs when this Court issued its original sanctions
4 order and we think the misrepresentation warrants the
5 imposition of additional sanctions to ensure that we don't
6 continue to encounter this kind of conduct. So, that's the
7 first component.

8 Your Honor, obviously we want the documents as well
9 that he secured for Mr. al Kadi as described in those materials
10 as well as documents relating to the Swiss government's
11 interrogation of him on May 3rd, 2004. At the time that
12 occurred Mr. Jelaidain was a defendant in this litigation
13 represented by counsel and he obviously had an obligation to
14 retain records relating to that interrogation and his
15 associated engagements with the Swiss authorities. We have
16 never received those materials and so we think Mr. Jelaidain
17 should be directed to provide all of those as well.

18 We have also already discovered some additional bank
19 accounts that we did not know of during the earlier proceedings
20 and so we don't know whether any effort has been undertaken
21 with respect to these additional bank accounts, they include an
22 Istanbul-based bank account for Jelaidain individually and also
23 an account for Maryam company. In addition, some U.S.
24 diplomatic cables disclose an account Jelaidain held jointly
25 with Shafiq Ayadi in Croatia at Privedna Banka, Zagreb.

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1 So, your Honor, we ask for a directive that
2 Mr. Jelaidain undertake efforts to secure records from those
3 institutions as well.

4 We also have a bit of a fuller picture now of the
5 range of business activities that Mr. Jelaidain has and has
6 engaged in. He is a very active businessman in addition to the
7 charitable associated activities that were the subject of much
8 of our earlier discussion. Those business activities also
9 generally involve interactions with other designated parties
10 and al Qaeda affiliated parties. Mr. Maloney is going to step
11 up in a minute to describe one of those and describe whether it
12 is relevant and why we are asking for discovery on these issues
13 but generally, as I said, all of these companies we have
14 identified in our papers, Abrar Caravan, Euro Investment, KA
15 Stan and Maryam Travel are entities that Jelaidain had
16 leadership position in. In many cases, documents were being
17 sent to a common address he used for multiple of his businesses
18 suggesting that he clearly had possession of these materials.
19 And, lastly, any documents relating to his long history of work
20 on behalf of government agencies of the Kingdom of Saudi Arabia
21 and in particular its charities which he directed.

22 Basically, what we have heard in response to this
23 issue, your Honor, is the same thing we have heard before. I
24 am under house arrest which does not really hold water. We
25 have comments in the news in the kingdom from his own

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1 Saudi-based lawyer years ago indicating that he was operating
2 without restriction in conducting business and we have news
3 accounts much later in 2008 indicating that he was a featured
4 speaker at a charitable conference hosted by defendant WAMY.

5 So, every indication is that he is free to operate in
6 the kingdom and not subject to nip house arrest.

7 We have also heard this claim that all of his records
8 were sequestered and seized by the Swiss authorities. The
9 document that's been cited relates to a single Citibank Geneva
10 account. It doesn't require the sequestration of all of his
11 bank accounts. There are literally dozens, some of them are
12 outside of the province of Switzerland anyway.

13 So, the explanations we have heard at this point
14 really don't stand. We are sort of approaching the end of the
15 road.

16 With that, your Honor, I would like to briefly turn it
17 over to Mr. Maloney.

18 THE COURT: Before you do that, your letter clearly
19 says and you repeat it today that you are not seeking a default
20 judgment but some other form of sanction or course of sanction.
21 What did you have in mind?

22 MR. CARTER: Well, your Honor, I think what we had in
23 mind is if the court were agreeable to imposing the sanction we
24 would make application as we did in the past. I think, in all
25 candor, it is unlikely to be a direct relationship to

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1 attorney's time spent on further efforts to bring Defendant
2 Jelaidain into compliance but rather to have an element
3 intended to deter this kind of conduct going forward.

4 There is also the issue, obviously, your Honor, that
5 there is already the existing sanction order against Defendant
6 Jelaidain which hasn't been made as of yet.

7 THE COURT: Thank you.

8 MR. CARTER: Thank you, Mr. Maloney has a few words.

9 MR. MALONEY: Good afternoon, your Honor. I am going
10 to be very, very brief. It has been a long day.

11 One of the things I want to talk about is
12 Mr. McMahon's response to our motion and in it, if you read it,
13 he talks a lot about the Swiss authorities and the seizure of
14 records. What he doesn't mention at all anywhere in there that
15 I saw was this company called Maryam that Mr. Carter referred
16 to that is in our papers both in our motion and in our reply
17 papers and that's because Maryam is in Turkey. The Swiss have
18 nothing to do with it and no control over it. So, in his
19 opposition he talks about the Swiss investigation and says
20 nothing about what is going on with Maryam and Turkey. That
21 company was shut down in 2002 or 2003 but I want to give you a
22 snippet of why that company is important to us and why we ask
23 for the information and I will try to do it in two minutes.

24 THE COURT: Sure.

25 MR. MALONEY: That company, it is called Maryam

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1 Travel, sometimes Maryam Import/Export located in Turkey, as I
2 indicated. It was founded by Mr. Salim, that's Mohammed Salim,
3 who was a senior al Qaeda member and very close to Bin Laden.
4 He was a suspect in the '98 embassy bombings, later arrested in
5 Germany and extradited to the United States where he stabbed a
6 prison guard in the eye and received a life sentence for that.
7 So, that's the founder of the company.

8 In '96 and '97 he sold the company to Mr. Jelaidain
9 and Mr. Jelaidain ran the company. Salim stayed active in the
10 company for some period of time with another gentleman by the
11 name of Al Jazeera and Mr. Kadi then started funneling money to
12 the company Maryam in Turkey, allegedly so Maryam could build
13 some housing for the University in Yemen. That university is a
14 university, it is a known educator for Jihad, the students
15 there later become Jihadists. Bin Laden referred to it in
16 support of the school.

17 There was over, I think, a million and change that we
18 found documentation on money transfer from Kadi to Maryam, i.e.
19 Jelaidain, that disappeared. Most of that money disappeared.
20 We have some of that information, some of those records. We
21 have asked for all of the records related to Maryam, the
22 business corporate records, financial records, anything to do
23 with Maryam as well as, of course, Mr. Jelaidain and the others
24 and the other intersects because there is a lot of especially
25 designated global terrorists associated with that company

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1 meaning Mr. Kadi and Mr. Jelaidain. We have received nothing.

2 Mr. McMahon doesn't even mention that company in his
3 opposition and doesn't say why he has not responded to those
4 specific and pointed document demands.

5 And just to quote Judge Casey and Mr. Haefele, it is
6 another kabuki dance that we have gotten year in and year out
7 from Mr. Jelaidain and Mr. McMahon.

8 THE COURT: Thank you.

9 Mr. McMahon?

10 MR. McMAHON: Yes. Good afternoon, your Honor. I
11 know it has been a long day for you and for all of us. I will
12 try to be brief.

13 I would like to address maybe initially the Swiss
14 money situation. We believe there was a valid argument about
15 sequestration because we had never been alerted to the fact
16 that we had appeal rights and we only recently were privy to
17 that information. But, in terms of this Swiss bank account --

18 THE COURT: Wait. You have lost me. An appeal right
19 in Switzerland?

20 MR. McMAHON: You are supposed to be notified by the
21 bank that has received the sequestration order from the
22 government that, indeed, you, Mr. Jelaidain, have a right to
23 appeal this order. We never got any notification from the
24 Swiss bank that we had a right to appeal that sequestration
25 order and that's in our papers, your Honor. Had we been told

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1 about that he could have hired Swiss counsel and had done an
2 appropriate appeal but I do think the sequestration issue is
3 different than the one that the expert focused on, Professor
4 Jaruli, he did not get into sequestration. I think
5 sequestration poses a different issue in terms of someone's
6 ability to produce documents.

7 But, your Honor, I would like to come up with maybe
8 some sort of solution here instead of wasting your time and the
9 case has been going on for years, of course.

10 Could we perhaps draft, myself and plaintiff's
11 counsel, an order that you would be willing to sign which goes
12 to Citibank, the Swiss authorities, Bank Faisal and any other
13 banks they want in Switzerland and we authorize you produce
14 everything you have with respect to Wael Jelaidain and this new
15 entity Maryam which I guess was shut down in 2002?

16 We are not adverse, your Honor, to full disclosure of
17 anything that is in the Swiss bank accounts or Swiss financial
18 records, Swiss authorities. We would like to get this all out.
19 We have been unable to do so.

20 When they talk about house arrest, your Honor, you can
21 be under house arrest and still receive permission to give a
22 speech, for example, at a function, or to attend your
23 daughter's wedding. I don't know if he is wearing an ankle
24 bracelet but your Honor knows lots of times situations come up
25 with a potential criminal matter has to have access to some

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1 sort of medical treatment or whatever. There are a number of
2 reasons why house arrest doesn't mean that you are totally
3 confined to the house.

4 Now, with respect to some of the new allegations that
5 I hear, let's talk about Turkey.

6 Again, your Honor, I checked before today and I
7 received no update in terms of we do have some information now
8 and so I have nothing to provide you, your Honor, in that
9 regard. I know you are not a fisher of that. My question is
10 can we craft a civil order with respect to any and all banks,
11 companies like Maryam, in Turkey, and if you are willing to
12 sign it then we send it and maybe then they will listen to a
13 court order in terms of producing things?

14 And we have no problem, your Honor, about full
15 disclosure. Anything the plaintiffs want to request consistent
16 with their Rule 34 request, obviously, we would have no problem
17 with drafting, co-drafting an order to that effect. We want to
18 get this behind us. No one seems to believe, your Honor, that
19 even though counsel overseas has tried to secure those records
20 he couldn't. And now we know why. There was a sequestration
21 order in effect and basically everything was waiting for Wael
22 Jelaidain to be basically extradited to America. And
23 consistent with my prior arguments, your Honor --

24 THE COURT: Hang on.

25 One thing that counsel said was that the sequestration

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1 order only dealt with one Citibank account in Switzerland.

2 MR. McMAHON: I don't think I read it that way, your
3 Honor, but I will go back and look at it, but my point is even
4 if there is no sequestration order, the attempts on Counsel
5 Bali, and he has sent letters to your Honor that we have
6 attached to our letter and he has tried to get, OFAC will slam
7 you for aiding and abetting an international terrorist and at
8 the time this all played out my guy was designated both by the
9 U.N. and by America, especially designated global terrorist.
10 Banks don't want to do business with someone like that because
11 they'll get into trouble but my point is, your Honor, I am
12 trying to come up with some solution so that you can be fairly
13 convinced that we have nothing to hide, we have an inability to
14 get records that the plaintiffs say they want, okay, let's
15 draft up an order that you are willing to sign, send the order
16 to the appropriate Swiss authorities whether it is Citibank,
17 Swiss authorities or Faisal, I don't care, and let's see if we
18 can bring this to a close, your Honor, because we are wasting
19 too much time on it.

20 In terms of further sanctions, I don't think it is
21 appropriate at this time for the Court to consider that unless
22 you are content that despite our diligent efforts we are sort
23 of hiding documents.

24 But, to the extent I authorize -- and I went through
25 this with counsel and the client -- let's send an order over

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1 that you are signing which says produce all of this stuff and
2 give plaintiffs every document they want.

3 THE COURT: Thank you.

4 Anything further, Mr. Carter?

5 MR. CARTER: Your Honor, a couple of quick points.

6 The sequestration order that's attached to Jelaidain's
7 opposition papers refers to just a single account at Citibank,
8 that's pretty clear.

9 Second of all, your Honor, with regard to this idea
10 about drafting an order to send out to international
11 authorities. We were down this road many, many years ago and I
12 think we said if Mr. McMahon and Mr. Jelaidain want to draft
13 letters interrogatory for your Honor's consideration and try
14 and fulfill their obligations that way, they can. It is not
15 our responsibility to do that. And that ship was in port and
16 sailed away quite a long time ago.

17 Lastly, with regard to the sanctions request, again,
18 it is based on the evidence that now exists that Mr. Jelaidain
19 affirmatively secured and was able to obtain copies of his
20 records and that's a different record than was before the Court
21 previously.

22 Thank you, your Honor.

23 MR. McMAHON: Your Honor, on that last point again
24 Abdullah Kadi and his attorney got those records, we never got
25 those records until they were produced as of, I think last year

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1 by Abdullah Kadi's counsel. Our guy never had those records,
2 it was Kadi's counsel -- sorry, Abdullah Kadi's counsel and his
3 aggressive law firm in London that was able to achieve, working
4 with a Swiss attorney, to achieve the production of these
5 documents. Keep in mind, your Honor, that this is a man who is
6 no longer designated as a specially global designated terrorist
7 like Wael Jelaidain. Again, a bank doesn't have a problem
8 dealing with somebody who has been delisted because that is
9 proof positive he is not a global terrorist. We have the
10 lingering problem that we have been both designated by the U.N.
11 and America as a global terrorist and that's always been the
12 brunt of our problems, your Honor.

13 And to the extent there are new issues that they've
14 brought up, I heard some new allegations about links to this,
15 links to that. Again, I would ask your Honor to consider I
16 haven't seen any factual linkage in terms of how Wael Jelaidain
17 assisted in destroying the U.S. S Cole or blowing up the first
18 World Trade Center or the embassy bombings. I haven't seen
19 anything, your Honor. It is just premised on newspaper
20 clippings and reliance on documents like the golden chain which
21 has been, you know, disregarded by these four or five federal
22 judges.

23 That's it for me, your Honor. I know you have had a
24 long day. Thanks for hearing me out.

25 MR. CARTER: Your Honor, I am not going to address

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1 much of that. I would just say that Defendant Kadi's very
2 aggressive attorneys obtained the documents because Jelaidain
3 assisted them and authorized them to get them. So, attorneys
4 working with Defendant Jelaidain's assistance could get the
5 documents.

6 Thank you, your Honor.

7 THE COURT: Well, I read the papers related to
8 Mr. Jelaidain and much of the written paperwork, perhaps more
9 so than the argument today, constitutes an attempt to
10 relitigate my prior award of sanctions and is a road I am not
11 going to go down.

12 The letters that were appended are in French, they
13 aren't translated, and there is the conclusory, unsworn letter
14 from Mr. Alim, Jelaidain's Saudi counsel, indicating what the
15 letters purport to say. But, again, that's much of the same in
16 terms of what was before the Court previously at the time that
17 the motion was before me.

18 It seems to me the salient fact that Mr. Carter
19 detailed whether Mr. Kadi was de-designated or never
20 designated, with the assistance of Mr. Jelaidain he was able to
21 secure documents that relate to a personal Faisal finance
22 account of Wael Jelaidain in 2003 and there is no apparent
23 reason why Mr. Jelaidain, with Mr. Baseem's assistance could
24 not do the same with respect to the discovery requests here.
25 And, at times I have issued orders relating to financial

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1 documents overseas including in the Middle East -- not in this
2 case but in cases involving at least Egypt and talk about
3 kabuki dances? That's a kabuki dance.

4 So, I will sign whatever orders, Mr. McMahon, you wish
5 me to sign, although the Hague Convention would be a much
6 better way to go assuming that any of the countries we are
7 talking about are signatories and haven't opted out of any of
8 the provisions but again, the key point is as I found
9 originally, there was inadequate effort to secure documents and
10 proof with respect to Mr. Kadi seems to simply underscore that.

11 I will order again, although it is really not
12 different from my prior orders, that Mr. Jelaidain produce the
13 documents with the sole exception of the so-called golden chain
14 documents. And I will permit the plaintiffs to make a motion
15 for sanctions that they wish to make.

16 In a number of instances today I have suggested
17 actions that need to be taken but haven't set specific
18 schedules for most of those and I trust that two sides will
19 confer quickly and submit a proposed scheduling order to me.

20 Is there anything else that we ought to take up today?

21 Yes?

22 MR. KREINDLER: Your Honor, I mentioned if we could
23 have two minutes on the Iran situation?

24 THE COURT: Yes. Sure.

25 MR. KREINDLER: Thanks.